

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA
9

10 TERRY COUSINS,

11 Plaintiff,

CASE NO. C 08-5764 KLS

12 v.
13 KITSAP COUNTY and KITSAP
COUNTY SHERIFF DEPARTMENT,

ORDER ON MOTION FOR
ATTORNEY'S FEES AND COSTS

14 Defendants.

15
16 As the result of several orders on summary judgment entered by this Court, all claims of
17 the Plaintiff were dismissed except that portion of her Claim I as it related to gender
18 discrimination and the failure to promote in March 2008. On June 1, 2011 the parties filed a
19 Stipulation and Proposed Order of Dismissal with Prejudice, with the issue of costs and attorneys
20 fees remaining and to be determined by this Court.

21 The Plaintiff and her counsel filed, on June 24, 2011, a Motion for Costs and Attorney
22 Fees Per Agreement. ECF No. 55 - 58. The remaining Defendants filed their opposition to the
23 requested costs and fees (ECF No. 61, 62 and 66) and the Plaintiff filed her Reply (ECF No. 63 -
24

1 65). Ms. Cousins has requested a total of \$55,400.00 in attorney's fees and costs in the sum of
2 \$4,849.40.

3 **I. INITIAL CLAIMS**

4 Ms. Cousins asserted four claims for relief in her Complaint. They included the
5 following: (1) Title VII discrimination based on gender, (2) interference with plaintiff's First
6 Amendment right to freedom of speech and redress of grievance against government, (3)
7 retaliation for whistle blower activity, and (4) retaliation for filing an EEOC claim.

8 The defendants asserted that the Plaintiff's claims alleging interference with her First
9 Amendment rights (Claim II) and retaliation for whistle blower activity (Claim III) were barred
10 by the doctrine of collateral estoppel. They also assert that there were no material issues of fact
11 regarding the claim of title VII gender discrimination (Claim I) and retaliation for filing an
12 EEOC claim (Claim II) and that they were entitled to judgment as a matter of law.

13 In the Court's Order Granting Defendants' Motion for Summary Judgment in Part and
14 Denying in Part (ECF No. 34) the undersigned dismissed all of Plaintiff's claims except that
15 portion of Claim I as it related to a claim of gender discrimination and the failure to promote Ms.
16 Cousins to Corrections Lieutenant in March 2008.

17 The facts surrounding the one remaining claim are more specifically addressed in the
18 Court's Order found at ECF No. 34, p. 3 – 6, and will not be repeated in detail here.

19 **II. OFFER OF JUDGMENT**

20 The Defendants presented an Offer of Judgment to Plaintiff (ECF No. 60) dated April 25,
21 2011. The Offer of Judgment was made pursuant to Fed. R. Civ. P. 68 and offered "to allow
22 judgment to be entered against it in the amount of twenty-five thousand dollars (\$25,000.00),
23 **plus an amount for reasonable costs accrued through the date of this offer including**

1 reasonable attorney fees solely for services performed by current counsel of record, the
2 amount of said costs and attorney fees to be determined by the Court.” (emphasis added).
3 In addition, the Offer of Judgment was conditioned on the following: (1) its full and
4 unconditional acceptance by plaintiff; (2) that all related actions, brought by plaintiff against the
5 defendants named in this action, whether judicial, administrative, or injunctive, be dismissed or
6 otherwise withdrawn; (3) that this serves as final resolution of all claims and allegations alleged
7 or fairly raised by plaintiff in this matter; and (4) plaintiff’s agreement to a stipulated dismissal
8 with prejudice of all claims against Kitsap County and the individually named defendants.

9 The Plaintiff accepted the offer and, as noted above, the parties filed their Stipulation and
10 Proposed Order of Dismissal with Prejudice. That order has not yet been entered by the Court as
11 the parties anticipated a determination, by the undersigned, regarding an award of attorney fees
12 and costs. The Defendant paid the \$25,000, by check, to the Plaintiff and the Plaintiff has cashed
13 the check.

III. SETTLEMENT AGREEMENT

15 The Settlement Agreement (ECF No. 59) contained several provisions which are relevant
16 to the issue of costs and fees now before the Court. The Settlement Agreement contained a
17 “Recitals” section which identified four matters that were to be resolved by way of the
18 Settlement Agreement. These matters included: (1) two whistleblower complaints with Kitsap
19 County in which the Plaintiff requested hearings with the Washington State Office of
20 Administrative hearings, which were assigned case numbers 2008-LGW-0004 and 2009-LGW-
21 2001; (2) the federal claim that is before this Court; and (3) the 2009 appeal filed by the Plaintiff
22 in Kitsap County Superior Court of the decision in the whistleblower complaint with the case
23 number of 2008-LGW-0004.

1 The Settlement Agreement was for the general release of all claims for the consideration
2 of \$25,000 paid by the Defendant to the Plaintiff and “as described more fully in Section 9,
3 **payment of reasonable attorneys’ fees and reasonable costs as may be determined by the**
4 **United States District Court in the Federal Lawsuit, ...” ECF No. 50, p. 1.** (emphasis added)

5 Section 9 reads as follows:

6 **COSTS AND ATTORNEYS FEES.** Kitsap County will pay Clayton Longacre’s
7 reasonable attorney’s fees and costs incurred by Terry Cousins’ through the date
8 this Agreement is executed as may be determined by the United States District
Court, Western District of Washington, in Case No. 08-5764 RBL¹, conditioned that a
motion for an order to award reasonable attorney’s fees and costs is filed with the Court
in accordance with Fed. R. Civ. Proc. 54.

9
10 Section 3 of the Settlement Agreement specifically addressed the various requests for
11 public records made by the Plaintiff. Section 3 reads as follows:

12 **WITHDRAWAL OF PUBLIC RECORDS REQUESTS.** In lieu of formal discovery
13 governed by the Federal Rules of Civil Procedure and Washington Court Rules, Terry
14 Cousins made requests to Kitsap County for public records under chapter 42.56 RCW.
Execution of this Agreement by Terry Cousins shall be deemed a withdrawal
15 of all request for public records made in connection with the Whistleblower
Complaints, Whistleblower Appeal, and Federal Lawsuit, including but not
limited to requests made on the following dates:

- 16 • August 26, 2008;
17 • October 4, 2010;
18 • October 6, 2010;
19 • October 7, 2010; and
20 • January 28, 2011.

21 The Court notes that the requests dated October 4, 2010 through January 28, 2011 were all made
22 after the Plaintiff filed her response to the Defendant’s motion for summary judgment. The
23 August 26, 2008 request was made almost four months prior to her filing this federal lawsuit.

24 ¹ The Court notes that this matter is before the undersigned by consent of the parties. Therefore, the correct
Cause Number is 08-5764 KLS.

1 Finally, Paragraph 10 of the Settlement Agreement contains the following language:

2 **ENTIRE AGREEMENT.** This Agreement sets forth the entire agreement and
3 understanding between the parties relating to the subject matter of this
4 Agreement and supersedes all prior agreements, discussions and documents
5 connected therewith. No party to this Agreement shall be bound by any terms,
conditions, definitions, warranties, understandings or representations with respect
to the subject matter of this Agreement other than as expressly provided herein,
except as may hereafter be agreed in a writing signed by the parties.

6 **IV. DISPUTED MEANING OF THE SETTLEMENT AGREEMENT**

7 It now appears that the parties do not agree on the meaning of their Settlement
8 Agreement as it relates to both costs and attorney's fees. The Plaintiff asserts that she is, by the
9 language of the Agreement, entitled to recoup all costs she incurred with regard to the
10 administrative hearings discussed in the defendant's first Summary Judgment motion, but no
11 attorney fees for those proceedings because she acted pro se in those hearings. ECF No. 55, p. 2
12 (Longacre Declaration for Costs and Fees). The Plaintiff also contends that the Settlement
13 Agreement permitted her to "recoup her costs in the federal action. Further, it allowed her
14 attorney, Mr. Longacre, his attorney fees for this federal action up to the date the settlement
15 became effective and was executed." *Id.* at p. 2. Finally, the Plaintiff asserts that the "offer of
16 attorney fees and cost were not limited to the remaining claims set for trial in Federal Court."
17 ECF No. 63, p. 3 (Reply RE: Costs and Fees). In short, the Plaintiff asserts a right to recover
18 all costs she incurred related to the Whistleblower hearings, Superior Court Appeal and Federal
19 Court case as well as all of Mr. Longacre's reasonable attorney's fees, without regard to the
20 success or lack of success of the claims asserted in federal court.

21 The Defendants, on the other hand, assert that the Agreement was only for the
22 Defendants to pay for costs and attorney fees incurred in this federal claim. In support of this
23 position the Defendants point out that (1) the whistleblower complaints were in no way related to
24

1 or connected with the one claim that was remaining in this federal court matter and (2) the
2 Plaintiff did not prevail in the whistleblower hearings.

3 **A. Case Law Regarding Enforcement of Settlement Agreements**

4 The parties stipulated that the Settlement Agreement be “construed and interpreted
5 according to laws of the State of Washington.” ECF No. 59, p. 3 (Settlement Agreement). In
6 Washington, courts interpret settlement agreements in the same way as they interpret other
7 contracts. *McGuire v. Bates*, 169 Wash.2d 185, 188, 234 P.3d. 205 (2010). In doing so, the
8 Court attempts to determine the intent of the parties by focusing on their objective manifestations
9 as expressed in the agreement. *See Hearst Commc’ns, Inc. v. Seattle Times Co.*, 154 Wash. 2d
10 493, 503, 115 P.3d 262 (2005).

11 In *Berg v. Hudesman*, 115 Wash.2d 657, 502, 801 P.2d 222 (1990), the Washington
12 Supreme Court “adopted the ‘context rule’ and recognized that intent of the contracting parties
13 cannot be interpreted without examining the context surrounding an instrument’s execution.”

14 Since *Berg*, we have explained that surrounding circumstances and other
15 extrinsic evidence are to be used ‘to determine the meaning of
16 specific words and terms used’ and not to ‘show an intention independent
of the instrument’ or to ‘vary, contradict or modify the written word.’ (citations
omitted).

17 Our holding in *Berg* may have been misunderstood as it implicates the
18 admission of parol and extrinsic evidence. We take this opportunity to
acknowledge that Washington continues to follow the objective
manifestation theory of contracts. Under this approach, we attempt to
19 determine the parties’ intent by focusing on the objective manifestations
of the agreement, rather than on the unexpressed subjective intent of the
20 parties. (citation omitted). We impute an intention corresponding to the
reasonable meaning of the words used. (citation omitted). Thus, when
interpreting contracts, the subjective intent of the parties is generally
21 irrelevant if the intent can be determined from the actual words used.
(citation omitted). We do not interpret what was intended to be written
but what was written. (citation omitted).

1 | *Hearst, supra*, at p. 503 – 504.

2 **B. Court’s Conclusions Regarding Meaning of Settlement Agreement**

3 Under the terms of the Settlement Agreement (ECF No. 59), Ms. Cousins agreed to a
4 general release of all claims in return for the payment of \$25,000 by the Defendants as well as
5 “payment of reasonable attorneys’ fees and reasonable costs as may be determined by the United
6 States District Court **in** the Federal Lawsuit.” (emphasis added) (ECF No. 59, ¶ 2). If there is
7 any ambiguity in the phrasing of this sentence, reference to Paragraph 9 of the Settlement
8 Agreement clarifies that intent of the Agreement. Under Paragraph 9, Kitsap County agreed to
9 pay Clayton Longacre’s “reasonable attorney’s fees and costs . . . as may be determined by the
10 United States District Court, Western District of Washington, **in Case No. 08-5764 RBL. . .**”
11 (emphasis added). By the terms of the Agreement, the award of reasonable attorney’s fees and
12 costs are only those fees and costs incurred in this federal civil suit.

13 Ms. Cousins presents argument in her declaration regarding her subjective understanding
14 of the wording used in the Settlement Agreement. This subjective understanding is clearly based
15 solely on her own interpretation of the Settlement Agreement and not the result of any further
16 negotiation or discussion between the parties. Regardless, her subjective understanding is
17 irrelevant “if the intent can be determined from the actual words used.” *Hearst, supra*, at p. 504.
18 In this instance, the intent can be determined from the actual words used.

19 The Court therefore concludes that the award of reasonable attorney’s fees and costs is
20 limited to those reasonably incurred in this particular litigation only.

21 **V. THE LAW REGARDING REASONABLE ATTORNEY’S FEES**

22 A court, in its discretion, may award a reasonable attorney’s fee to a prevailing party. 42
23 U.S.C. § 1988.

1 In determining what attorney's fee is reasonable in a particular case, the court arrives at
2 the "lodestar amount," which is determined by multiplying the number of hours reasonable
3 expended by a reasonable hourly rate. *Jordan v. Multnomah County*, 799 F.2d 1262, 1265 (9th
4 Cir. 1986). There is a strong presumption that the lodestar represents the reasonable fee. *City of*
5 *Burlington v. Dague*, 505 U.S. 557, 562 (1992). In appropriate cases, the court may adjust the
6 presumptively reasonable loadstar figure based upon the factors listed in *Kerr v. Screen Extras*
7 *Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975). The court need not consider all the *Kerr* factors, but
8 only those called into question by the case at hand and necessary to support the reasonableness of
9 the fee award. *Cairns v. Franklin Mint Co.*, 292 F.3d 1139, 1158 (9th Cir. 2002).

10 Under *Kerr*, in reviewing a claim for attorney's fees the court should consider the
11 following twelve factors: (1) the time and labor required, (2) the novelty and difficulty of the
12 questions involved, (3) the skill requisite to perform the legal services properly, (4) the
13 preclusion of other employment by the attorney due to acceptance of the case, (5) the customary
14 fee charged in the locality for similar legal services, (6) whether the fee is fixed or contingent,
15 (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the
16 results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the
17 'undesirability' of the case, (11) the nature and length of the professional relationship with the
18 client, and (12) awards in similar cases. *Kerr*, at 69-70.

19 The fee applicant has the burden of documenting the appropriate hours expended in the
20 litigation and must submit evidence in support of those hours worked. *Gates v. Gomez*, 60 F.3d
21 525, 534-35 (9th Cir. 1995). The party opposing the fee application has a burden of rebuttal that
22 requires submission of evidence to the district court challenging the accuracy and reasonableness
23 of the hours charged or the facts asserted by the prevailing party in its submitted affidavits. *Id.*

1 **VI. THE LAW REGARDING REASONABLE ATTORNEY'S FEES WHEN**
2 **ONLY PARTIALLY SUCCESSFUL**

3 In *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983), the
4 issue presented to the Supreme Court was “whether a partially prevailing plaintiff may recover
5 an attorney’s fee for legal services on unsuccessful claims.” *Id.* at p. 426. “The standard for
6 making this threshold determination has been framed in various ways. A typical formulation is
7 that ‘plaintiffs may be considered ‘prevailing parties’ for attorney’s fees purposes if they succeed
8 on any significant issue in litigation which achieves some of the benefit the parties sought in
9 bringing suit.’ *Nadeau v. Helgemoe*, 581 F.2d 275, 278-279 (CA1 1978). (footnote omitted).
10 This is a generous formulation that brings the plaintiff only across the statutory threshold. It
11 remains for the district court to determine what fee is ‘reasonable.’” *Id.* at p. 433. This also
12 means that work on an unsuccessful claim cannot be deemed to have been “expended in pursuit
13 of the ultimate result achieved.” *Id.* at p. 435.

14 “In some cases a plaintiff may present in one lawsuit distinctly different claims for relief
15 that are based on different facts and legal theories. In such a suit, even where the claims are
16 brought against the same defendants . . . counsel’s work on one claim will be unrelated to his
17 work on another claim. Accordingly, work on an unsuccessful claim cannot be deemed to have
18 been ‘expended in pursuit of the ultimate result achieved.’ *Davis v. County of Los Angeles*, 8
19 *E.P.D. ¶ 944*, at 5049 (CD. Cal. 1974). The congressional intent to limit awards to prevailing
20 parties requires that these unrelated claims be treated as if they had been raised in separate
21 lawsuits, and therefore no fee may be awarded for services on the unsuccessful claims.” *Id.* at p.
22 434-435.

1 In instances where a plaintiff has achieved only partial or limited success, “the product of
2 hours reasonably expended on the litigation as a whole times a reasonable hourly rate may be an
3 excessive amount. This will be true even where the plaintiff’s claims were interrelated,
4 nonfrivolous, and raised in good faith. Congress has not authorized an award of fees whenever it
5 was reasonable for a plaintiff to bring a lawsuit or whenever conscientious counsel tried the case
6 with devotion and skill. Again, the most critical factor is the degree of success obtained.” *Id.* at
7 p. 436. “We hold that the extent of a plaintiff’s success is a crucial factor in determining the
8 proper amount of an award of attorney’s fees under 42 U.S.C. § 1983. Where the plaintiff has
9 failed to prevail on a claim that is distinct in all respects from his successful claims, the hours
10 spent on the unsuccessful claim should be excluded in considering the amount of a reasonable
11 fee. . . . But where the plaintiff achieved only limited success, the district court should award
12 only that amount of fees that is reasonable in relation to the results obtained.” *Id.* at p. 440.

13 **VII. DISCUSSION REGARDING PARTIAL SUCCESS**

14 As noted above, Ms. Cousins asserted four claims for relief in her Complaint. They
15 included (1) Title VII discrimination based on gender, (2) interference with plaintiff’s First
16 Amendment right to freedom of speech and redress of grievance against government, (3)
17 retaliation for whistle blower activity, and (4) retaliation for filing an EEOC claim.

18 In the Court’s Order Granting Defendants’ Motion for Summary Judgment in Part and
19 Denying in Part (ECF No. 34) the undersigned dismissed all of Plaintiff’s claims except that
20 portion of Claim I as it related to a claim of gender discrimination and the failure to promote Ms.
21 Cousins to Corrections Lieutenant in March 2008. This was the only narrow issue remaining
22 for resolution at the time the Defendants made their Offer of Judgment. All other claims had
23 been dismissed by the Court.

1 Claim 1 had two components. The first was with regard to failure to promote Ms.
2 Cousins to the Corrections Lieutenant position on March 18, 2008 due to gender discrimination.
3 The second component was with regard to failure to promote Ms. Cousins to the Corrections
4 Lieutenant position on August 11, 2008. The Court dismissed the claim related to the August
5 11th failure to promote for failure to make a prima facie case of discrimination. To a certain
6 extent, the second component of Claim 1 may have its roots in the denial of promotion on March
7 18, 2008 but it also required development of new, independent facts which were not related to
8 the March 18th claim.

9 As discussed in the Court's Order Granting Summary Judgment (ECF No. 34), Claims 2
10 and 3 revolved around a separate incident that occurred on August 26, 2005 – which incident
11 was completely separate from the claims asserting Title VII discrimination based on gender. The
12 fourth claim, retaliation for filing an EEOC claim. This claim was dismissed for failure to
13 exhaust administrative remedies. The basis of Ms. Cousins' claim was that she was not
14 promoted to the Corrections Lieutenant position in August 2008 because she filed an April 2008
15 EEOC charge. Claims 2, 3 and 4 were factually unrelated to the one claim that remained
16 following summary judgment.

17 **VIII. DISCUSSION REGARDING REASONABLE ATTORNEY'S FEE**

18 **1. Time and Labor Required.** The Plaintiff, through her attorney, requests attorney's
19 fees for 221.2 hours ² at the rate of \$250/hour for a total fee of \$55,400.00.

20 However, based on the information provided by the Plaintiff, it is somewhat difficult to
21 determine how much of the time and labor of Plaintiff's counsel was required for her one
22 *successful claim*. As noted above, the Plaintiff was successful only with regard to a limited,

24 ² \$55,400 - \$100 consultation fee = \$55,300 ÷ \$250 = 221.2 hours

1 discrete claim which was not factually related to the other claims set forth in her Complaint.
2 Because of this limited success, the Court should award fees for time limited to that claim. Mr.
3 Longacre made no effort to segregate the time and labor he expended on the unsuccessful claims
4 from the successful claim. For instance, Mr. Longacre expended a total of 13 hours reviewing
5 both the recorded and transcribed depositions of Newlin, Payne, Bonneville, Furuta, Holt, Hall,
6 Harrell, Gay, Lawson, Elton and Hauge. He has not, however, shown how all of these
7 depositions were related to the one remaining claim. In fact, according to the testimony of Ms.
8 Cousins, she took the deposition of Sheriff Newlin on August 15, 2008 for discovery purposes
9 related to her Whistleblower Appeal Action. ECF No. 21, p. 11 (Declaration of Terry Cousins).
10 The additional depositions she said she took on August 18, 2008 were also related to the
11 Whistleblower Appeal Action. *Id.* The Court can only conclude that the time expended in
12 reviewing the depositions, recorded or transcribed, were not related to the one successful claim.
13 Therefore, the total of 13 hours shall be deducted.

14 In addition, it is difficult for the Court to determine how much of the additional time
15 expended by Mr. Longacre on this case between August 26, 2008 through February 6, 2010,
16 which was 36.45 hours, is actually related to the one successful claim. This is due to the fact that
17 Mr. Longacre made no attempt to segregate the hours. It does, however, seem appropriate based
18 on review of the general entries to reduce the amount by 18 hours.

19 Mr. Longacre spent 4.5 hours on August 26, 2008 regarding preparation of Freedom of
20 Information Act requests which were submitted to Kitsap County dated August 26, 2008. ECF
21 No. 62, pgs. 102 – 116. A careful review of the requests shows that a vast majority of the
22 documents requested were directed to Ms. Cousins’ whistleblower related claims and not to the

23
24

1 one successful claim. The time spent, therefore, was excessive in relation to the one successful
2 claim and it shall be reduced by 3.0 hours.

3 The time Mr. Longacre spent on February 9, 2010 regarding the failure of his office to
4 receive notice of electronic filing (4.4 hours) should not be passed on to the Defendant. Mistakes
5 of his office need to be borne by his office.

6 From February 10, 2010 through February 18, 2010 Mr. Longacre documents expending
7 70.5 hours in preparing his belated response to the Defendants' Summary Judgment Motion. As
8 already noted, he had limited success in defending against the Defendants' motion and he is not
9 entitled to full compensation for the 70.5 hours he claims. The Court believes, based on review
10 of the entries as well as the documents filed by the Plaintiff, that the number of hours should be
11 reduced by 50 hours.

12 The Court is also reducing the hours claimed by 1.5 hours for the entry on June 1, 2011.
13 The Court does not believe that the Defendants should pay for the time it took the Plaintiff and
14 her attorney to deposit the settlement check.

15 The Court notes that the vast majority of the Defendants' objections to Mr. Longacre's
16 billing is that of "block billing." This appears to be the case whenever more than one item is set
17 forth. For example, on 3/23/2011 Mr. Longacre recorded .15 hours for: Email from
18 J.Aufderheide re: Dr. Hamm IME, forward to client via email. This does not appear to the
19 undersigned to be the type of improper block billing which obviously concerned Judge Bryan in
20 *Sutherland v. Kitsap County*, 2007 WL 639786 (W.D. Wash.). The Court is able to determine
21 what was done on the case and also able to determine that the time charged was reasonable. For
22 the most part, that seems to be the case for the balance of his billing.

23
24

1 The Defendants' also object to the time expended by counsel related to the motions to
2 dismiss Sheriff Newlin and with regard to the Defendants' motion to compel an independent
3 medical examination . These issues, however, were raised in conjunction with the one successful
4 claim that was pending before the Court. It would not be appropriate to deduct the entire amount
5 of time expended on those issues. However, the Court does agree that the amount of time
6 expended by Counsel regarding Sheriff Newlin should be reduced by 3.75 hours as the time
7 expended was excessive in light of the pleading filed with the Court. In addition, the Court is of
8 the opinion that it is appropriate to reduce the number of hours regarding the medical
9 examination by 3.0 hours.

10 Based on the Court's review of the billing records provided by Mr. Longacre, it
11 concludes that a total of 96.65 hours should be deducted based on its conclusion that the hours
12 were not related to the one successful claim.

13 **2. Novelty and Difficulty of Questions Involved.**

14 Mr. Longacre asserts that due to the fact the Defendant is a governmental entity the case
15 is more difficult than against a private company. He also asserts that since his client is an
16 employee of the sheriff's department that the case was that much harder due to the secretive
17 nature of the department.

18 However, the Court finds that these two reasons do not support a conclusion by the Court
19 that this case involved any particularly novel or difficult issues. This is a civil rights
20 employment case which, like other similar cases, had its challenges which were not out of the
21 norm for other such cases.

22 **3. Requisite Skill.**

1 Other than reciting his professional experience, Mr. Longacre did not present any
2 additional information regarding the skill required to perform the legal services involved in this
3 case.

4 **4. Preclusion of Other Employment.**

5 The Plaintiff failed to provide any evidence on this factor.

6 **5. Customary Fee Charged in the Locality for Similar Legal Services.**

7 There is little evidence before the Court regarding customary fees in the locality for
8 similar legal services, that is, hourly fees for attorneys in Kitsap County employment cases or,
9 for that matter, customary hourly fees for attorneys in employment cases in other counties. Mr.
10 Longacre provided his own declaration regarding his customary hourly rate of \$250.00/hour
11 supplemented by his own statement that his hourly rates are “close to what most other attorneys
12 with the years experience I have charge. Many attorneys actually charge more.” ECF No. 64, p.
13 2, Longacre Declaration.

14 The Defendant’s submitted a First Amended Motion and Order for Payment of Costs
15 (ECF. No. 62, p. 58), from a separate criminal case, in which Mr. Longacre stated that his
16 “hourly rate for trial is \$200.00 per hour.” This document is dated June 4, 2009. In response,
17 Mr. Longacre states in his Reply (ECF No. 63) that the rate was for “trial” time only. Also, Mr.
18 Longacre states, in his Declaration (ECF No. 64, p. 2), that he charges a rate of “\$250 per hour
19 for brief writing and trial time with a 20% discount for payment within 10 days of billing.” ECF
20 No. 64, p. 2.

21 “When a party seeks an award of attorneys’ fees, that party bears the burden of
22 submitting evidence of the hours worked and the rate paid. In addition, that party has the burden
23
24

1 to prove that the rate charged is in line with the ‘prevailing market rate of the relevant
2 community.’” *Carson v. Billings Police Dept.*, 470 F.3d 889, 891 (9th Cir. 2006).

3 The evidence provided regarding “prevailing market rate of the relevant community” is
4 limited to Mr. Longacre’s statement that his rates “are close to what most other attorneys with
5 the years experience I have charge. Many attorneys actually charge more.” While the evidence
6 is scant, considering what is before the Court as well as taking the Court’s experience into
7 consideration, the undersigned concludes that an appropriate hourly rate is \$200/hour.

8 **6. Whether the Fee is Fixed or Contingent.**

9 The case was taken on a contingency fee basis with no flat fee retainer.

10 **7. Time Limitations Imposed by the Client or the Circumstances.**

11 Plaintiff failed to provide any evidence on this factor.

12 **8. The Amount Involved and the Results Obtained.**

13 The Plaintiff filed a Claim for Damages in which she verified, under oath, that she
14 sustained damages in the amount of \$1,000,000.00 (one million dollars). ECF No. 62, p. 63.
15 The case settled for \$25,000.00. The Court also notes that the claim covered not only the
16 successful claim but the other claims set forth in the Plaintiff’s Complaint.

17 **9. Experience, Reputation and Ability of Counsel.**

18 Mr. Longacre has been practicing law for quite some time in the area of employment and
19 civil rights.

20 **10. The Undesirability of the Case.**

21 The Plaintiff provided no evidence on this factor.

22 **11. The Nature and Length of the Professional Relationship with the Client.**

23 Mr. Longacre has been representing Ms. Cousins since 2008.

1 **12. Awards in Similar Cases.**

2 The Plaintiff provided no evidence on this factor.

3 **IX. CONCLUSION REGARDING ATTORNEY'S FEES**

4 Based on the Court's review of the fee request, the undersigned has determined that 91.9
5 hours were not reasonably expended on the one limited successful claim that survived summary
6 judgment. This results in the lodestar calculation of 124.55 hours at \$200/hour for a total award
7 of an attorney's fee of \$24,910.00. The Court concludes this is a reasonable fee and that the
8 factors, as discussed above, do not warrant any additional adjustments.

9 **X. COSTS**

10 28 U.S.C. § 1920 delineates the items that may be taxed as costs, as follows:

11 (1) Fees of the clerk and marshal;

12 (2) Fees for printed or electronically recorded transcripts necessarily obtained for use in
13 the case;

14 (3) Fees and disbursements for printing and witnesses;

15 (4) Fees for exemplification and the costs of making copies of any materials where the
16 copies are necessarily obtained for use in the case;

17 (5) Docket fees under section 1923 of this title;

18 (6) Compensation of court appointed experts, compensation of interpreters, and salaries,
19 fees, expenses, and costs of special interpretation services under section 1828 of this title.

20 The burden is clearly on the Plaintiff to show that the costs requested are related to the
21 successful claim that remained before the Court and, with regard to request for transcripts, that
22 they were "necessarily obtained for use in the case."

23 Ms. Cousins seeks an award of costs in the sum of \$4,849.40. ECF No. 58.

1 It is clear that Ms. Cousins is entitled to costs for her filing fee in federal court in the sum
2 of \$350.00; costs of mediation of \$1,232.50; postage for documents mailed to the federal court of
3 \$5.60.

4 It is also clear that she is not entitled to be reimbursed for costs incurred in relation to the
5 Whistleblower complaints or for the purchase of office supplies to be used by Mr. Longacre.
6 Ms. Cousins does not meet the requirement of showing which portions of transcripts were
7 "necessarily obtained for use in this case" – which was limited to the one issue remaining after
8 the grant of summary judgment. Finally, it is not clear, from the balance of Ms. Cousins request,
9 that the items identified were related to the one issue remaining before the Court. For all those
10 reasons, the balance of the request for reimbursement of costs is DENIED.

11 Therefore, the Court concludes that the Plaintiff is entitled to an award of costs in the
12 sum of \$1,588.10.

13 **CONCLUSION**

14 The Plaintiff , as a prevailing party, is entitled to an award of reasonable attorney's fees
15 in the sum of \$24,910.00 and costs in the sum of \$1,588.10.

16 Dated this 2nd day of November, 2011.

17
18 
19 Karen L. Strombom
United States Magistrate Judge
20
21
22
23
24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24